

REMARKS

This paper responds to the second office action, which action was non-final.

The Examiner is thanked for the indication that claims 52-54, 57-59, 61-62 and 64-69 are allowed.

The Examiner also is thanked for the indication that claims 29-30 and 37 would be allowable if rewritten into independent form. To this end, each of claims 29 and 30 has been rewritten to incorporate the limitations of cancelled independent claim 15; thus, claims 29 and 30 should now be in condition for allowance. Claim 37 has been written into independent form by incorporating the limitations of cancelled independent claim 34; thus, claim 37 also should now be in condition for allowance.

Dependent claims 16-27 and 31-33 now depend directly or indirectly from independent claim 29 and thus are in condition for allowance. Note that dependent claims 16-17, 20-24, 27 and 31-33 have been amended to conform their dependency due to the cancellation of claim 15. Where appropriate, the word "said" has been rewritten as "the" to improve legibility.

Dependent claims 38-44 should also be in condition for allowance, as they now depend directly or indirectly from independent claim 37. Note that dependent claims 39-44 have been amended to conform their dependency due to the cancellation of claim 34. Where appropriate, the word "said" has been rewritten as "the" to improve legibility.

Independent claim 45 has been cancelled.

This leaves outstanding just claims 1-12, 14, 46-49 and 51, which stand rejected under 35 USC 103(a) as being unpatentable over Laroia et al., U.S. Publication No. 2005/0073973, in view of Kubler et al., U.S. Publication No. 2005/0254475. With respect to the rejection of claims 1-12 and 14, respectfully this rejection is traversed, for the reasons set forth below. To address the rejection of independent claim 46, however, please note that the first tier "executed centrally" and the second tier "executed distributedly" limitations (as in allowable claim 29) have now been included in claim 46. Thus, it is believed that claim 46 and dependent claims 47-49 and 51 should now be in condition for allowance.

The rejection of claims 1-12 and 14 appears misplaced, however, and the undersigned respectfully requests reconsideration.

Laroia et al. is the primary reference; Kubler et al. is cited merely for its teaching of wireless communications using an unlicensed frequency band. In rejecting claim 1, the Examiner contends that Laroia et al. teaches “mitigating interference by making particular channels ... available for use by network nodes disposed in said portions of said service area based upon dynamically determined communication link metrics,” citing to paragraphs [0009] and [0033] of the reference. In the first instance, the Examiner has cited to the original clause in claim 1 and not the clause as amended on November 28, 2005. In particular, in response to the first office action, the clause was amended to recite “mitigating interference associated with external interference sources by making particular channels ...” In considering alleged obviousness under 35 USC 103(a), it is the subject matter “as a whole” that must be found in the alleged combination of references; here, the Office has not met its initial burden of establishing prima facie obviousness as to claim 1 as the “associated with external interference sources” limitation therein has not even been addressed.

The Examiner will note that the phrase “external interference sources” is defined in the written description, for example, at paragraph [0031] on page 7:

“Where unlicensed spectrum is to be utilized in providing information communication, such as for implementing wireless broadband access, the sources of interference are not limited primarily to devices in the communication network (referred to herein as internal interference sources), but may include any number of devices external to the communication network (referred to herein as external interference sources). Cooperative operation among network devices, e.g., synchronization and spatial scheduling, may be used to address interference associated with internal interference sources. However, such techniques are ineffective at addressing interference associated with external interference sources. (emphasis supplied)”

Laroia et al., at most, address dealing with “internal interference sources,” but they make no mention of, and do not disclose, “mitigating interference associated with external interference sources” as positively recited. In particular, note that Laroia et al. describe “inter-sector interference” at paragraph [0004], which is their reference to “internal interference sources.” Claim 1, as noted above, requires mitigating interference associated with external interference sources by making particular channels of the plurality of channels available for use by network nodes disposed in the portions of the service area based upon dynamically determined communication link metrics. In citing Laroia et al. against the “dynamically determined ...” language, the Examiner points to paragraphs [0009] and [0033], but these paragraphs merely

state that the “classifications of type of information [such as power control, user data, and the like] and types of channels may be flexible and may be changed dynamically during operation, e.g., to adjust to changing conditions, ...” This, however, is not the same thing as saying that dynamically determined communication link metrics are used to determine which particular channels of the plurality of channels should be available for use by the network nodes to thereby “mitigat[e] interference associated with external interference sources.” As to this particular subject matter, Laroia et al. (and Kubler et al.) are silent; thus, claim 1 is not prima facie obvious.

For this reason, claims 1-12 and 14 are deemed to describe patentable subject matter.

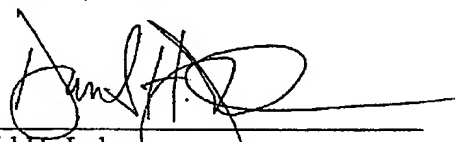
The net number of independent claims remains at twelve (12), and that number of claims has been previously paid for; thus, no additional fees are included. If additional fees are required, please charge Deposit Account No. 50-4001 in the undersigned’s name.

Note Regarding Rule 3.73(b) Showing

The file wrapper includes the papers submitted on November 28, 2005. These included a Rule 3.73(b) showing reflecting that the current owner, Colubris Networks, Inc., has authority to act in this application. The Rule 3.73(b) showing did not identify the Reel/Frame of the assignment document that vested rights in this application in Colubris Networks, Inc., as that information was not then available. That information is now available. In particular, the assignment to Colubris Networks, Inc. has been recorded at Reel 16817 Frame 416.

A Notice of Allowance is respectfully requested.

Respectfully submitted,



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